IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SECOND DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 12614 of 2004

Between:

1 J. Shankar Babu S/o. J. Venkaiah
O/o. Sub-Divisional Engineer (Out Door), Gunadala, Krishna District.
2 M. Enock, S/o. Sri M. Joseph,
TTA, RLU Telephone Exchange, Kothapet, Chirala, Prakasam District,
Stuvartpuram Colony (PO), Bapatla Mandalam, Guntur District-522 317.

..... PETITIONER(S)

AND

1 The Union of India rep. by Secretary to Govt., Dept., of Telecommunications, Door Sanchar Bhavan,
New Delhi - 110 001.
2 The Director General, M/s. Bharat Sanchar Nigam Ltd., Sanchar Bhavan,
New Delhi.
3 The Chief General Manager, M/s. Bharat Sanchar Nigam Ltd.,
A.P. Circle, Abids, Hyd.
4 The General Manager, Telecom District, M/s. Bharat Sanchar Nigam Ltd.,
Prakasam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue Writ of Mandamus or any other appropriate writ Order or direction in the nature of Writ by declaring that letter No. TA/LC/5-104/2004 dt. 8th June, 2004, and letter No. IA/LC/5-122/2004 dt. 10.6.2004 issued by the Office of the 3rd Respondent as illegal, arbitrary and unconstitutional and set aside the same with a direction to the Respondents to consider grant of relaxed standard in the qualifying marks for the Examination of Junior Telecom Officers (35% quota) held on 6th May,2000 on the same lines as was granted in respect of Junior Telecom Officers (15% quota) Examination held during the years 1999 and 2000 vide letter No.12-15-/20002-DE

dt. 10th March, 2003 with all consequential benefits such as promotion to the posts of Junior Telecom Officers, seniority, arrears of pay and allowances etc in the interest of justice.

Counsel for the Petitioner:MR.VEMURIVENKATESWARA RAO

Counsel for the Respondents: Smt. Chintlapudi Lakshmi Mr. Kanti Narahari, Mr. R.S. Murthy (standing counsel for Central Government) Ms. P. Sarada

The Court made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 12614 of 2004

O R D E R:

The present petition is filed to issue a writ of Mandamus declaring the Letter No.TA/LC/5-104/2004 dated 8.6.2004 and Letter No.TA/LC/5-122/2004 dated 10.6.2004 by the 3rd respondent as illegal, arbitrary and unconstitutional and to give a consequential direction to consider grant of relaxed standards for the qualifying marks for the Examination of Junior Telecom Officers (35% quota) held on 6.5.2000 on the same lines as was granted in respect of Junior Telecom Officers (15% quota) Examination held during the years 1999 and 2000 vide Letter No.12-15/2002-DE dated 10.3.2003.

The petitioners herein are working as Phone Inspector and Telecom Technical Assistant respectively. The next promotion to the cadre of Junior Telecom Officers is by following methods:

a. 15% quota through competitive examination held for the in-service candidates.

b. 35% though Departmental Screening Test by considering in-service candidates and

c. 50% by Direct Recruitment.

The petitioners are fully qualified and eligible for promotion to the post of Junior Telecom Officers in 35% quota through Departmental Screening Test. According to them, in the departmental qualifying test held against 35% quota on 6.5.2000 they secured more than 30% aggregate in the said examination. The results of the examination were declared on 2.9.2003 but the petitioners were not declared as qualified since they could not secure 40% on par with the general candidates. In the said 35% quota, to be filled in by Departmental Qualifying Test, 16 posts remained vacant till today for want of qualified candidates. It is further stated that the qualified standards in respect examinations held for promotion to the Junior Telecom Officers against 15% quota in the year 1999 and 2000 was reduced from 40% to 30% in respect of Ocs and from 30% to 20% in respect of SC/ST candidates vide proceedings No.12-15-2002-DE dated 10.3.2003 as one time measure to fill up the posts of Junior Telecom Officers lying vacant from 1995 onwards. However, the said relaxed standard has not been extended to 35% Departmental Qualifying Screening Test quota. On the same analogy the petitioners are entitled for treatment. The reasons for relaxation mentioned in the letter dated 10.3.2003 are equally applicable to the examination held on 6.5.2000 in respect of 35% quota Departmental Qualifying Screening Test. Therefore, such a discrimination amounts to denial of equality before law. The petitioners filed O.A. Nos. 363 of 2004 and 436 of 2004 before the Central Administrative Tribunal, Hyderabad seeking directions to the respondents to consider and grant the relaxed standard in the qualifying marks for the examination of Junior Telecom Officers held on 6.5.2000 against 35% quota. The said O.As. were disposed of by the Tribunal directing the respondents to consider the grievance of the petitioners and pass appropriate orders. Thereafter, the office of the respondent-BSNL issued the impugned letter rejecting the claim of the petitioners herein. Hence the present writ petition.

The respondents 1 to 4 filed counter affidavit stating that

as the petitioners are in-service candidates, they are eligible to be considered for promotion to the post of Junior Telecom Officers in 35% quota through departmental screening test. None of the petitioners was qualified in the said examination. It is further stated that in respect of 15% quota of Junior Telecom Officers for promotions, competitive examination was held on 16.9.2000 and in that examination, qualifying marks were reduced from 40% to 30% to the OCs and 30% to 20% to SC/ST candidates to fill up the vacancies against 15% quota vide letter No.12-15/2002 DE dated 10.3.2003. The examinations conducted for 35% or 15% quota are entirely on different footing. They are not comparable with reference to educational qualification and standards of examinations. The 15% quota examination is under merit quota. While giving relaxation in marks against 15% competitive exam, apart from the availability of vacancies the above indicated aspect is also taken into consideration. In case of screening test, it is only qualifying test where there was already relaxation in standard of syllabus and examination. Even the relaxation in standards granted for the same examination on the previous year cannot be automatically made applicable for the succeeding year. As regards the contention that there are large number of vacancies in the cadre, it shall not automatically entitle an employee to be promoted without his/her fulfilling minimum eligibility conditions. Therefore, the petitioners cannot seek any relaxation on par with others who appeared for competitive examinations against 15% quota in the year 1999 and 2000. The standard of examination, mode of examination and the group of candidates appearing for these 2 types of examinations formed heterogeneous group and the same analogy cannot be applied in both the exams. Therefore, the respondents pray to dismiss the writ petition.

Learned counsel for the petitioners contended that the petitioners are totally discriminated by not drawing the analogy in pursuance of the circular dated 10.3.2003 issued by the respondents where under the required minimum aggregate marks in respect of

15% quota have been reduced. On the same analogy, the minimum aggregate marks for the petitioners also ought to have been reduced. He further contended that the reason for relaxation in respect of 15% quota is that large number of vacancies were lying unfilled for suitability of candidates. So also in 35% quota, number of vacancies are unfilled. Therefore, on the same analogy of the proceedings dated 10.3.2003, the petitioners are entitled to be promoted as Junior Telecom Officers.

On the other hand, the learned counsel for the respondents contended that in respect of 35% quota no relaxation is given by the Bharat Sanchar Nigam Limited (BSNL). Therefore, the analogy applied for 15% quota cannot be taken as a basis for relaxing the rules in respect of 35% quota and there are absolutely no grounds to issue a writ of Mandamus to the respondents to act contrary to the rules governing the promotion. Hence, the learned counsel for the respondents prays to dismiss the writ petition.

The admitted facts are that, to the cadre of Junior Telecom Officers there are three methods, (1) 15% quota through competitive examination held for in-service candidates, (2) 35% through departmental screening test by considering in-service candidates and (3) 50% by Direct Recruitment. It is also not in dispute that the petitioners fall within the 2nd category i.e. 35% through departmental screening test as in-service candidates. It is further not in dispute that for promotion to the Junior Telecom Officers the required minimum qualifying aggregate marks in all the subjects is 40%. In the examination for which the petitioners appeared for departmental qualifying test held on 6.5.2000, they admittedly secured more than 30% aggregate but less than 40% marks. Therefore, they were declared as not qualified. In its proceedings No.12-15/2002-DE dated 10.3.2003, the BSNL stated that its Head Quarters have been receiving various references from circle offices Employees Associations etc. for applying the relaxed standards for declaration of results where large number of vacancies were lying unfilled as sufficient number of candidates were not available within

the normal qualifying standards of 50% and 35% marks in each subject for OC candidates and SC/ST candidates respectively. Therefore, the entire issue has been examined by the Department and it was decided that in addition to the results already declared as per the standards mentioned, separate merit list for unfilled vacancies may be drawn up by applying the relaxed standards in order to make available more departmental candidates for filling in the posts of Junior Telecom Officers under 15% quota. For 15% quota, the required minimum aggregate marks in all the subjects will be 30% for OC candidates and 20% for SC/ST candidates. Basing on the said circular, the petitioners seek promotion by applying the same analogy in reducing the minimum marks from 40% to 30%. But, for the same reason the impugned proceedings dated 8.6.2004 have been issued. The reasons given in the impugned proceedings are that the relaxation of standards for the examination held in the years 1999 and 2000 for the 15% of vacancies of JTO was given in view of the fact that a large number of vacancies were lying unfilled but in the case of 35% quota large number of candidates who have qualified in the screening test are waiting for their turn for promotion as Junior Telecom Officers as all the vacancies against 35% are filled up. As such, the ground on which the relaxation of standard given for 15% quota does not exist in the case of 35% quota. Hence the request of the petitioners for relaxation of standard in qualifying marks for the screening test held on 6.5.2000 was not acceded and the claim of the petitioners was rejected.

The respondents have taken a decision in view of various representations made by the Officers Association that large number of vacancies were lying unfilled as sufficient number of candidates were not available within the normal qualifying standards of 50% and 35% marks in each subject for OC and SC/ST candidates respectively. Accordingly the respondents re-fixed the percentage of minimum aggregate marks at 30% for OCs. and 20% for SC/ST candidates. But, as seen from the impugned proceedings, about 500

candidates who have qualified in the screening test held on 6.5.2000 are waiting for promotion as Junior Telecom Officers for want of vacancies. The same is not shown to be false or incorrect. But, a specific plea has been taken that as on today only 16 posts remain vacant in 35% quota. The said fact is not specifically denied in the counter filed by the respondents. However, the case of the respondents is that the examinations conducted for 35% quota and 15% quota are entirely on different footing and they are not comparable with reference to the educational qualifications and standard of examinations. The 15% quota examination is under merit quota. The relaxation in marks against 15% quota was given taking into account the availability of vacancies.

Therefore, from the above discussion it is clear that because of number of vacancies lying vacant for want of suitable candidates, some relaxation was given in respect of 15% quota. As seen from the impugned proceedings it is clear that number of candidates have been qualified in the screening test held on 6.5.2000 in respect of 35% quota and therefore such relaxation cannot be given in respect of 35% quota.

However, learned counsel for the petitioners placed strong reliance on a decision of the apex court in ***John Vallamatoom v. Union of India*** wherein it is held:

> "The equality clause enshrined in Article 14 of the Constitution of India is of wide import. It guarantees equality before the law or equal protection of the laws within the territory of India. The restriction imposed by reason of a statute, however, can be upheld in the event it be held that the person to whom the same applies, forms a separate and distinct class and such classification is a reasonable one based on intelligible differentia having nexus with the object sought to be achieved".

There is no doubt about the above proposition of law laid

down by the apex Court. In this case also 35% quota and 15% quota formed separate and distinct class and therefore the classification of reducing the percentage of marks in respect of 15% quota basing on the material available on record is reasonable one based on intelligible differentia having nexus with the object sought to be achieved. When there are qualified persons in the same examination that was held on 6.5.2000, relaxation of marks cannot be claimed as a matter of right. The fact as noted in the impugned proceedings that around 500 candidates in 35% quota who have qualified in the screening test are waiting for promotion to the cadre of JTO has not been specifically denied or disputed in the affidavit filed by the petitioner, except stating that as on today 16 posts remain vacant in 35% quota. The vacancies of those posts may be of subsequent examinations. The affidavit is silent whether those 16 posts are relating to the year 2000. On the other hand, a specific plea has been taken by the petitioners which reads:

> "that apart, admittedly, 500 candidates are in the waiting list against the said quota which means availability of vacancy is not the criteria to declare the eligibility of the candidates who have written the examination. As such the said plea is not tenable in the eye of law. The petitioners herein can also be declared as qualified by applying the abovementioned relaxed standard and included in the list of eligible candidates so that they can also be promoted in their turn as Junior Telecom Officers against 35% quota along with the said 500 eligible candidates".

From a reading of the above paragraph it is clear that about 500 eligible candidates who are qualified in the screening test held on 6.5.2000 are waiting for promotion. Such is the case, the

same analogy cannot be drawn in this case because in the case of 15% quota number of vacancies were unfilled for want of suitable candidates and therefore relaxation was given but in this case number of qualified candidates are available.

Therefore, the impugned proceedings do not suffer from any serious legal infirmities so as to call for interference. On proper reasoning basing on the material available on record the impugned proceedings have been passed. The writ petition is devoid of merit and it is accordingly dismissed.

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K.C. Bhanu, J.

Date:02--12—2004.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Secretary to Govt., Dept., of Telecommunications, The Union of India, Door Sanchar Bhavan, New Delhi - 110 001.
2 The Director General, M/s. Bharat Sanchar Nigam Ltd., Sanchar Bhavan, New Delhi.
3 The Chief General Manager, M/s. Bharat Sanchar Nigam Ltd., A.P. Circle, Abids, Hyd.
4 The General Manager, Telecom District, M/s. Bharat Sanchar Nigam Ltd., Prakasam District.

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